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Ashok Adur

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EXAMINER

BOYLE, ROBERT C

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Attachment to Advisory Action***

1. Applicant's response filed August 25, 2009 has been fully considered but is not persuasive.

*103 Rejection of over Abdou-Sabet et al., (US 4,311,628) in view of Wszolek (US 3,578,614) and Gerber (US 5,145,913)*

2. Applicant argues that Wszolek and Gerber are non-analogous art. This is not persuasive.

3. In response to applicant's argument that Wszolek and Gerber is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

4. Applicant argues that the appropriate field of art should be "thermoplastic vulcanizate comprising polypropylene and EPDM". This is not persuasive.

5. In this case, the instant application "relates to catalyst systems for preparing elastomeric compositions" (see page 1 of the instant specification) and "catalyst systems of the invention are useful for preparing elastomeric compositions whereby an elastomer or elastomeric phase is cured" (see page 7 of the instant specification).

6. Wszolek is directed to "accelerated curing of a liquid composition comprising a polyene" and states that a group of polyenes "operable in the instant invention" include "conventional elastomers" (column 1, lines 13-23; column 3, lines 26-52). Because both the applicant and

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Wszolek relate to curing elastomeric compositions, and hence in the same field of endeavor, Wszolek is analogous art.

7. In this case, the instant application is concerned with deliver of better performing polymers (instant specification: page 1). Gerber is pertinent to the problem of better performing polymers, because Gerber teaches the chlorides increase magnesium solubilization and replacement of magnesium hydroxide with the chloride increases the 24 hour room temperature compressive strength of the cured product (column 22, lines 42-48; column 24, lines 34-50).

8. Additionally, the instant invention is concerned with the curing of phenolic resins and how long it takes to cure (instant specification: pages 4, 7, 17 and 20). Gerber is directed to controlling the rate of phenolic resole resin hardening (column 1, lines 16-21). Because Gerber is reasonably pertinent to the particular problem of the applicant, controlling phenolic resin curing rates, Gerber is analogous art.

9. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

10. Applicant argues that because the art of curing EPDM is unpredictable, the combination of Abdou-Sabet in view of Wszolek and Gerber would not be predictable. However, Wszolek teaches the use of alpha-hydroxy carboxylic acids, naming eight specific acids including citric acid, as accelerators achieve a commercially acceptable curing rate in less than 1/2 hour below

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250°C from a liquid (Wszolek: column 1, lines 13-58; column 2, lines 24-27). Gerber teaches the chlorides increase magnesium solubilization and replacement of magnesium hydroxide with the chloride increases the 24 hour room temperature compressive strength of the cured product (column 22, lines 42-48; column 24, lines 34-50), which is a very specific cause and effect. Therefore, while the art may be unpredictable, the references provide very specific reasons for using the particular combination provided in the rejection and make predictable solutions: using citric acid will achieve commercially acceptable curing rates and using chlorides increases magnesium solubilization. Therefore, applicant's argument is not persuasive.

*103 Rejection of over Giller et al., (US 3,287,440) in view of Wszolek*

11. Applicant argues that Wszolek and Gerber are non-analogous art. This is not persuasive.
12. The discussion with respect to Wszolek, non-analogous art, and combining Wszolek above, paragraphs 3-10, is incorporated here by reference.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT C. BOYLE whose telephone number is (571)270-7347. The examiner can normally be reached on Monday-Thursday, 9:00AM-5:00PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571)272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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